



Sheppard, Mullin, Richter & Hampton LLP
30 Rockefeller Plaza
New York, New York 10112-0015
212.653.8700 main
212.653.8701 fax
www.sheppardmullin.com

April 11, 2025

212.896.0611 direct

File Number: 0009-349364

VIA ECF

The Honorable Edgardo Ramos
United States District Judge
United States District Court for the
Southern District of New York
40 Foley Square
New York, New York 10007

MEMO ENDORSED

Re: ***United States v. John Fazio, Jr., 2011-cr-00873 (ER) – Request For a Status Conference***

Dear Judge Ramos:

John Fazio, Jr. ("Fazio"), a defendant in the above-captioned case, respectfully submits this letter requesting a status conference. It has been almost five and half years since the Court granted Fazio's 2255 Motion and ordered re-sentencing and the outstanding restitution and forfeiture issues have not been decided. In addition, Mr. Fazio's request to eliminate the Labor Management Reporting and Disclosure Act ("LMRDA") bar remains undecided, impeding Mr. Fazio's ability to work.

Background

As the Court knows, following a jury trial, Fazio was convicted of five counts: racketeering (18 U.S.C. § 1962(c)), racketeering conspiracy (18 U.S.C. § 1962(d)), extortion conspiracy (18 U.S.C. § 1951), unlawful receipt of labor payments conspiracy (18 U.S.C. § 371), and money laundering conspiracy (18 U.S.C. § 1956(h)), arising out of his involvement with codefendants Anthony Fazio, Sr. and Anthony Fazio, Jr. as executives of Local 348 of the United Food and Commercial Workers' Union ("Local 348"). (2019 PSR at ¶ 24.)

On September 13, 2012, Fazio was sentenced to 135 months incarceration, followed by three years supervised release, a \$1.5 million fine, restitution and forfeiture in the amount of \$2.5 million, and a \$500 mandatory special assessment. (Dkt. No. 173, Judgment as to John Fazio, Jr., September 17, 2012; Fazio Sentencing Transcript at 84, September 13, 2012). After his conviction and sentence was affirmed on appeal, he pursued collateral relief in a § 2255 motion. That motion was denied by the District Court but the U.S. Court of Appeals for the Second Circuit granted a Certificate of Appealability. Before briefing on the appeal, the Government made a *Brady* disclosure, acknowledging that \$273,000 related to alleged fraudulent invoices had been improperly included in the loss amount attributed to Fazio. (Dkt. No. 368, Ex. 2 (Letter from AUSA B. Blais, July 8, 2019)). Following this disclosure, on September 5, 2019, the Second Circuit vacated the District Court's denial of Fazio's § 2255 Motion and remanded the case. On September 16, 2019, this Court granted Fazio's § 2255 Motion and ordered resentencing.

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Fazio was released on September 17, 2019 after serving approximately 88 months in prison. Fazio's resentencing hearing was held on June 1, 2022, at which the Court imposed a sentence of time served and one year of supervised release (an additional year tacked onto his already three years of pre-trial supervised release that Fazio was subjected to after his release from prison while waiting for his resentencing hearing). On April 18, 2024, the Court held a status conference and stated that the Court will issue a decision on restitution and forfeiture "within the next few weeks." (Apr. 18, 2024 Hearing Tr. 8:8-9, Dkt. 385.) The issues related to restitution and forfeiture remain outstanding.

On May 8, 2024, the Court granted Fazio's to reduce the LMRDA statutory bar, however the Court did not remove the bar entirely it "solely to the extent it 'permit[s] him to obtain a low-level position with a labor union.'" (Dkt. No. 384.) On January 24, 2025, Fazio filed a motion seeking to eliminate the bar entirely so that he can pursue labor union-related activities not just "low level" positions. That motion remains pending.

Conclusion

For the foregoing reasons, Fazio respectfully requests that this Court schedule a conference to address these unresolved issues. Given the lapse of time and prejudice to Mr. Fazio, in the absence of any action on this request in the next thirty days, our only other recourse would be to request intervention from the Chief Judge.

Respectfully Submitted,

/s/ Michael J. Gilbert

Michael J. Gilbert
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: Assistant United States Attorney Micah F. Fergenson (via ECF)

A conference will be held on April 29, 2025, at 11:30 a.m.
SO ORDERED.



Edgardo Ramos, U.S.D.J.

Dated: 4/14/2025

New York, New York